

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Scott Glenn,**  
Petitioner-Appellant,

**v.**

**Mills County Board of Review,**  
Respondent.

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**ORDER**

**Docket No. 12-65-0046**  
**Parcel No. 05652**

On August 1, 2013, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Petitioner Scott Glenn was represented by Attorney Ryann Glenn of Deborah Peterson, PLC, Council Bluffs. Attorney Brett Ryan of Watson & Ryan, PLC, Council Bluffs represented the Board of Review at hearing. The Appeal Board, having reviewed the record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Scott Glenn is the owner of a commercially classified property located at 505 Nuckolls Street, Glenwood, Iowa. The property is a 43,190 square-foot metal warehouse originally built in 1966 with additions in 1981, 1991, and 1995. The property record card indicates the warehouse's condition as "very poor." The warehouse includes a 3,744 square-foot office listed in normal condition. The site is 1.296 acres.

Glenn protested to the Mills County Board of Review regarding the January 1, 2012, assessment of \$713,961, allocated as \$69,888 in land value and \$644,073 in improvement value. The January 1, 2012, assessment of the subject property did not change from the prior year's assessment.

Glenn's petition to the Board of Review was on the ground that there has been a change in value since the last assessment under Iowa Code sections 441.37(1)(b) and 441.35(2). Glenn asserted the fair market value of the subject property was \$150,000, which was what he purchased the property for in June 2011.

The Board of Review granted the petition, in part, reducing the assessment to \$416,186, allocated as \$69,888 in land value and \$346,298 in improvement value.

Glenn then appealed to this Board reasserting his claim and again asserting the fair market value of the subject property was \$150,000.

Glenn testified that he viewed the property on June 1, 2011, when it was listed for \$175,000; then made a \$150,000 cash offer and purchased the property "as is" on June 2, 2011. According to Glenn's real estate agent, the subject property had been vacant since 2002. Glenn explained that in the summer of 2011, another warehouse property he owned was in danger of flooding and he needed immediate space to move inventory. In his opinion, he overpaid for the property because of this motivation.

Glenn noted the roof was leaking, windows were broken, and gutters were plugged up and needing repair at the time of purchase. Overall, he testified the subject property was in "pretty poor shape" when he purchased it. He also noted he was aware of the physical condition of the property, but despite the condition he did not feel it was necessary to have an inspection. Since he purchased the property, he has repaired and improved the roof and closed up the windows on the west side of the building. Currently, Glenn operates a tire business in the building. He has some professional equipment (car hoists) that are bolted to the floor; however Glenn considers them personal property.

Glenn notes the property is in a 100-year flood plain, with a creek located across the street roughly a half a block away. Further, he recognizes the property has flooded in the past, which was evidenced by watermarks on the building; and, since he purchased the property he has witnessed near

flooding of the improvements with water up to the parking lot before it receded. Regardless of these facts, he does not find it necessary to purchase flood insurance, primarily because he believes there are too many loopholes that would result in the insurance being ineffective. Therefore, given the high cost of the flood insurance and his belief that even if he carried it, ultimately it would not cover losses that may occur due to flooding, he has chosen not to carry it. Glenn also stated he was unable to obtain a loan to finance the purchase because of the property's location in the flood plain. He believes that the concerns of past and potentially future flooding affect the value of the property.

Glenn considered the sale of another warehouse in Glenwood, known locally as the "TRAJET property" as evidence of the subject's market value. The TRAJET property is larger than the subject property at approximately 63,000 square feet, is located on 5.37 acres, and was assessed at \$446,056 in 2012. It is constructed of cement block and is not located in a flood plain. Glenn did not submit the full property record card for the TRAJET property to compare its condition, grade, and other characteristics with the subject. Therefore, we are unable to determine if the TRAJET property is sufficiently similar to be comparable.

Additionally, the TRAJET property's sale was an abnormal transaction. The Beacon report indicates it sold in December 2011 for \$31,535 in a transfer from the Mills County Treasurer due to a tax sale. As a result, this transfer would not be considered to represent a normal transaction and, without adjustments to eliminate the effect of the distorting factors, must not be taken into account in arriving at the subject's market value. § 441.21(1)(b).

Lastly, Glenn believes that as of January 1, 2012, the subject property's market value is \$150,000. This is due, in part, to the improvements he made since he purchased the property. When questioned what he believed the value was as of January 1, 2011, he asserted the value was worth between \$75,000 and \$85,000. However, he provided no support, such as an appraisal, for his value opinions for either date.

Kathryn Aistrope, a real estate agent with Jim Hughes Real Estate, testified regarding the listing/sale of the subject property. She has been in the real estate industry for twenty years. Aistrope reported that Hughes Real Estate has the vast majority of sales and listing data in the area, resulting in extensive interaction with appraisers and other real estate professionals. She testified that Hughes Real Estate obtained the listing of the subject property in March 2011, when it was listed at \$175,000. Prior to Hughes obtaining the listing, the property was listed with CB Richard Ellis, a larger national real estate firm. CB Richard Ellis held the listing for “several years” according to Aistrope. She did not recall any offers on the property during that listing period.

Aistrope testified regarding the flooding of the area and particularly the subject property. She noted that in 1999, when there was a flood, she observed the property breached by floodwaters. Aistrope also testified regarding the property’s condition based on two inspections of the building when it was listed by CB Richard Ellis. Aistrope generally described the property as dated and dirty with puddles on the floor and the walls “were not in very good shape.”

In Aistrope’s opinion, a property’s list price does not necessarily reflect the fair market value of a property. Aistrope believes the \$150,000 sales price of the subject property reflected the fair market value as of its purchase in June 2011. We find this conflicting with Glenn’s testimony because he testified that he over-paid for the property and it was not worth \$150,000 until after he made improvements.

Ultimately, Glenn did not provide sufficient evidence of the subject’s fair market value as of January 1, 2012, or as of January 1, 2011. Both the 2011 and 2012 values are necessary to establish a change in value since the last assessment. *Equitable Life Ins. Co.*, 252 N.W.2d at 450.

Based upon the foregoing, we find insufficient evidence has been presented to support a claim of change in value for the January 1, 2012, assessment date.

### *Conclusions of Law*

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Alternatively, a sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for. *Id.*

In a non-reassessment or "interim" year, when the property's assessment has not changed, a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code §§ 441.35(2), 441.37(1)(b); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). For Glenn to be successful in his claim of change in value, he must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co.*, 252 N.W.2d at 450. The assessed value cannot be used for

this purpose. *Id.* Essentially, it is not enough for Glenn to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

Glenn essentially asserts the property's fair market value on January 1, 2012, is the sales price, \$150,000. Further, he contends the property's fair market value on January 1, 2011, was roughly \$75,000 to \$85,000. Even if the sales price was reflective of the market value, the sales price alone may not be conclusive evidence. Section 441.21(1)(b) makes it clear that a sales price for the subject property in a normal transaction, just as a sales price of comparable property, is a matter to be considered in arriving at market value but does not conclusively establish that value. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996).

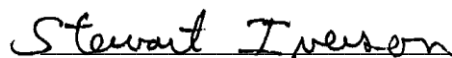
Regardless, Glenn provided no evidence of the property's fair market value as of January, 2011, to establish a downward change in value. Both the 2011 and 2012 values are required to support a claim of change in value. *Id.* at 450.

The APPEAL BOARD ORDERS the assessment of the property owned by Scott Glenn located at 505 Nuckolls Drive, Glenwood, Iowa, of \$416,186, as of January 1, 2012, set by the Mills County Board of Review, is affirmed.

Dated this 22nd day of August, 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Cc:

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Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on August 22, 2013.

By: ☒ U.S. Mail ☐ FAX  
☐ Hand Delivered ☐ Overnight Courier  
☐ Certified Mail ☐ Other



Signature \_\_\_\_\_